IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF JUNE

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 16968 of 1993

Between:
I. Viswanadham S/o Pullaiah
Karimnagar

..... PETITIONER

AND

1 A.P. Adminisration Tribunal Puranihowli, Hyderabad
2 Prl. Sectretary to Govt., Irrigation & Command Area Dev. (I & CAD) Dept.,
Hyderabad
3 Sectretary to Govt., Irrigation Dept.,
Govt. of A.P., Hyderabad
4 Engineer-in-Chief (Admn), Irrigation & Command Area Development, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more in the nature of mandamus declaring the orders in the nature of mandamus declaring the orders in O.A.No.81395/90 dt: 16-4-1993 modifying the orders in G.O.Ms.No.250, Irrigation and Command Area Development, Department dt: 4-5-1990 as stoppage of one increment without cumulative effect instead of three increments with cumulative effect while treating the period of suspension as duty with full pay and allowances and confirming the orders of recovery of Rs.91,840/- of the

2nd respondent as illegal and void and consequently to direct the respondents to grant all consequential benefits including seniority, promotion and other attendant benefits as this Hon'ble Court may deem fit and proper in the circumstances of the case

For the Petitioner:MR.M.R.K.CHOWDARY

For the Respondent Nos.2 to 4:G.P. for Services-II.

The Court made the following:

ORAL ORDER: (per GB. J.)

The Writ Petition is filed assailing the order passed by the A.P. Administrative Tribunal (for short Tribunal) in O.A.No.81395 of 1990, dated 16.4.1993.

2. The petitioner was working as Deputy Executive Engineer, Irrigation Department, Karimnagar. While so, disciplinary enquiry was initiated against him and other officers and a charge sheet was issued with the following charges:

> "You have misused your power and authority vested in you and not complied with the codal rules and standing instructions in drawing and accounting of the 20 MTs of steel.
>
> You have misused your power and authority and caused a loss of 20 MTs of steel valued at Rs.91,840/- to the Government".

Thereafter an enquiry was conducted and the Enquiry Officer, as far as the petitioner is concerned, held that the petitioner was not responsible for the state of affairs which were created by the contractor, who drew steel through forged indents, which were honoured by the stores section against the prescribed rules, and accordingly recommended that the petitioner may be exonerated. However, the Government, basing on the Enquiry Officer's report, issued a show cause notice in Memo No.822/Ser.IV.1/82-31, dated

5.11.1985, to which the petitioner submitted an explanation. Finally the Government issued G.O.Ms.No.250, Irrigation and Command Area Development (CAD Ser.II) Department, dated 4.5.1990 imposing punishment of withholding three annual grade increments with cumulative effect and to recover the proportionate loss caused to the Government out of Rs.91,840/-. Against the said order, the petitioner carried the matter before the Tribunal in the above OA. The learned Tribunal having accepted the findings of the Enquiry Officer, modified the punishment to that of deferment of one increment with cumulative effect and confirmed the recovery of amount as ordered in G.O.Ms.No.250, dated 4.5.1990. Against the said order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that when the Enquiry Officer has exonerated the petitioner on the charges and recommended for exoneration, the Government having acted upon the said report, ought not to have imposed the punishment. Therefore the punishment imposed by the Government is wholly illegal and without jurisdiction. He further submits that the Tribunal having accepted the findings of the Enquiry Officer, ought to have quashed the order of punishment instead of modifying the same. Therefore, he submits that the order is liable to be set aside.

4. On the other hand the learned Government Pleader for Services-II submits that when the petitioner was found to be responsible for the irregularities, the order of recovery from the salary cannot be said to be illegal and contrary to law. Moreover, it is a case of joint liability, in which event the petitioner has to incur the punishment proportionately.

5. We have heard the learned counsel for the parties at length.

6. It is not in dispute that a charge sheet was issued against the

petitioner and the Enquiry Officer conducted joint enquiry, but, however, as far as the charges relating to the petitioner is concerned, the Enquiry Officer has clearly held that the petitioner was not responsible for the irregularities and accordingly recommended exoneration. The Government did not disagree with the findings of the Enquiry Officer and on the other hand on the report of the Enquiry Officer itself, it has issued show cause notice proposing to impose punishment of deferment of three increments with cumulative effect and also recovery of money to the extent of loss caused to the State. It is to be noted that when once the Enquiry Officer submitted his report to the Government, it is open for the Government either to disagree or agree with his report, but if the Government disagrees with the report of the Enquiry Officer, the petitioner is entitled for notice for such disagreement. In the instant case, such an opportunity was not given to the petitioner. Moreover, we do not find any reasons for disagreement with the findings of the Enquiry Officer in the order as passed by the Government. This aspect was correctly appreciated by the Tribunal and held that the report of the Enquiry Officer is quite legal and valid as he has given cogent and well-considered reasons. In such a situation the Tribunal ought not to have modified the punishment, but quashed the same in its entirety. Under those circumstances, we are of the considered view that the order of the Tribunal is not sustainable in law.

7. In the result, the Writ Petition is allowed. The order of the Tribunal is set aside, and the order of punishment as passed by the Government in G.O.Ms.No.250, dated 4.5.1990 is quashed. It is now brought to our notice that the petitioner has since been retired

from service. Therefore the amount what has been recovered from the petitioner, the respondents 2 to 4 are directed to refund the same within a period of three (03) months from the date of receipt of a copy of this order, failing which it shall carry interest at 9% per annum from today till the date of payment. No costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the 17th day of June, Two Thousand and Four.

SSR Assistant Registrar

Copies to

1. The Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal).
2. A.P. Adminisration Tribunal Puranihowli, Hyderabad
3. Prl. Sectretary to Govt., Irrigation & Command Area Dev. (I & CAD), Department, Hyderabad
4 Sectretary to Govt., Irrigation Dept.,Govt. of A.P., Hyderabad
5 Engineer-in-Chief (Admn), Irrigation & Command Area Development, Hyderabad.
6. G.P. for Services-II (O.U.T.)
7. 2 CD Copies.